Michael K. Jeanes, Clerk of Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2005-050090 11/13/2006

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

GEORGE A HORMEL II, et al. JIM L WRIGHT

v.

MARICOPA COUNTY BOARD OF SUPERVISORS JERRY A FRIES

UNDER ADVISEMENT RULING

Plaintiff's Motion for Summary Judgment

The County alleges that Ms. Candelaria, on behalf of the Assessor's Office, denied Plaintiffs' refund claim because she knew that there was an application process for obtaining historic property classification that Plaintiffs had failed to comply with and that the Assessor did not have authority to grant Class 6 status. For some reason, however, she did not share this information with Plaintiffs; she did not share it with Mr. Davis, whom she assigned to conduct the meeting, or with Ms. Head, whom Mr. Davis assigned to investigate the case. Nor did she reveal that hers was to be the final decision, and that the approval of Ms. Head and Mr. Davis would be meaningless because there existed an internal procedure for three-tiered review that was apparently never set down on paper until afterward. Ms. Candelaria offers no explanation for her secretiveness, or for her failure to disclose to Plaintiffs that the investigation and meeting were to be no more than a sham, as her decision would not (or, according to the County's position, could not) be affected by the result. Nonetheless, the County asserts that Plaintiffs are not entitled to relief, and that it is itself entitled to undo the prospective reclassification made for the 2004 tax year.

The inconsistency is obvious: agents of the Assessor's office first agreed to lower the tax, then withdrew that agreement. Plaintiffs reasonably relied on the representations of Ms. Head

and Mr. Davis, as there was nothing to warn them that a three-tier review process existed and consequently only Ms. Candelaria's approval was effective. Injury to Plaintiffs exists in that they were denied their right of appeal, since Ms. Candelaria's rejection of the agreement reached by her subordinates occurred after the expiration of the 150-day time limit for appeal. However, liability for the tax itself, assuming that the County were to prevail at the State Board of Equalization, is not a cognizable injury. There had been no previous representation by the County that the Wrigley Mansion would be taxed at the Class 6 rate, so Plaintiffs did not arrange their financial affairs in the expectation that the tax would be lower than what was ultimately assessed. This distinguishes the situation here from *Valencia Energy Co. v Arizona Dept. of Revenue*, 191 Ariz. 565, 569 (1998) in which there was an affirmative representation by the Department of Revenue that Valencia's activities were not taxable, based on which Valencia did not collect transaction privilege taxes which the state retrospectively demanded.

Plaintiffs assert, and the County concedes, that through the end of the 150-day period, the County expressly represented to Plaintiffs that it accepted their claim, informing them differently only after the time limit expired. Plaintiffs thus had the choice of filing an appeal within the 150 days in the expectation that it would be moot, wasting their resources and those of the Board of Equalization, or trusting the County and being left without a remedy when the promised relief was denied. "While a court has a legitimate interest in the procedural rules that govern lawsuits, especially to prevent such rules from becoming a shield for serious inequity." *Hosogai v. Kadota*, 145 Ariz. 227, 231 (1985), the Court's determination of the merits renders Plaintiff's Motion for Summary Judgment moot.

Defendant's Cross-Motion for Summary Judgment

Turning to the merits, should the Court accept the County's invitation to address them, it appears that the statutory procedure for historic property classification is confusing even to those charged with implementing it. The State Parks Board's web site misleadingly states that the Assessor "enacts" tax classification changes rather than merely entering them on the rolls. The County's own Reply to its Cross-Motion, contradicting the original Cross-Motion, asserts that the Assessor has the final authority to review the historic preservation officer's determination and reject it if he believes it to have been made in violation of the statute. To be clear, it is the state historic preservation officer, not the Assessor, who grants classification as a historic property. A.R.S. § 42-12103(F). However, the Assessor receives the application from the property owner and is required to submit the application to the historic preservation officer. A.R.S. § 42-12102(E).

A.R.S. § 42-12102(A) requires the property owner to take the initiative to obtain historic property classification, and subsection (B) requires that the application must be filed *during the tax year immediately preceding the first tax year for which the classification is sought*. It does

not appear that Plaintiffs attempted to obtain such classification for the Wrigley Mansion prior to submitting the Notice of Claim in April 2004. The Class 2 classification for tax years 2001 through 2003 (valuation years 2000-2002) was not an error. Concomitantly, estoppel is not proper as Plaintiffs failed to apply for reclassification, thus, it can hardly be asserted that they reasonably expected the property to be reclassified. Ergo, Plaintiffs did not rely on any representation that the taxes they paid were excessive.

The County also seeks relief from its own alleged error in granting historic classification for tax year 2004, and also raises the issue of classification for tax years 2005 through 2007. The Court recognizes the catch-22 in which the County deliberately places Plaintiffs, based on its interpretation of A.R.S. § 42-16252(D). (In the Reply to its Cross-Motion, the County goes even farther and claims that, because Plaintiffs' Reply/Response did not explicitly *consent* to Defendant's reclassification, the County may collect the taxes from 2004. Subsection C provides that silence constitutes consent, not dispute, so the clause is not triggered.) The Court may deny summary judgment even where no dispute as to material fact is laid before it. *Orme School v. Reeves*, 166 Ariz. 301, 309 n.11 (1990). First, it is not evidenced in the record that the County complied with the terms of A.R.S. § 42-16252(A), which requires a notice of error sent by certified mail to the taxpayer's last known address. Notice by a supplemental disclosure statement or a Response to a Motion for Summary Judgment does not qualify. In addition, the County is bound by its own argument that it is the state historic preservation officer who decides whether a property is to receive historic property classification, with the Assessor's function the purely ministerial one of entering that classification on the tax rolls. It is for the officer to determine whether the prerequisites have been met; there is no provision in the statute for the Assessor even to appeal, much less to reject his determination. Here, *the state historic preservation officer approved the historic classification of the Wrigley Mansion.* Whether he did so in time for the 2004 tax year is a moot point, as A.R.S. § 42-16252(D) prevents the County from retrospectively collecting the additional tax for that year. As for 2005 and subsequent years, the County's only argument appears to be the hypertechnical one that Plaintiffs submitted their request on a general form rather than the specific one supposedly required -- though apparently this too was an unwritten rule of which Plaintiffs were never informed. Thus, it appears, the County believes itself relieved of its mandatory statutory duty to submit the application to the historic preservation officer within ten days, and refuses to recognize the officer's decision on the ground that he was not properly asked to make it. While the Court gives considerable deference to administrative procedures, it need not elevate form over substance and allow literalness to defeat the purpose of the statute. *See, e.g., Transporting Renewable Resources, Inc. v. Industrial Comm. of Arizona*, 185 Ariz. 543, 545 (App. 1996). The issue of whether the Wrigley Mansion qualifies for Class 6 was directly addressed and investigated by both the Assessor's Office and the historic preservation officer. The County may not reject the historic preservation officer's determination on the ground that Plaintiffs unwittingly filled out the wrong sheet of paper. Plaintiffs were not timely informed that they had

filed the wrong form – indeed, were assured that their application was approved -- and so were entitled to rely on A.R.S. § 42-12102(C), which provides that Class 6 status, once granted, lasts for fifteen years before a new application must be submitted.

Therefore, IT IS ORDERED

1. Denying Plaintiff's Motion for Summary Judgment.

2. Granting Defendant's Cross-Motion for Summary Judgment with respect to tax years 2001 through 2003.

3. Denying Defendant's Cross-Motion for Summary Judgment with respect to tax year 2004 and subsequent tax years: (§ 42-12102(c)).